

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 26.19 (2) Whiting Bay and Denny's Bay Area, 10 Tote Limit. Emergency regulations

ADOPTED RULE NUMBER:

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for a ten (10) tote limit in the Whiting Bay and Denny's Bay Area to protect Maine's urchin resource due to the risk of unusual damage and imminent depletion of the resource in this area as authorized by 12 M.R.S.A. §6171(3). The Department is concerned that unrestricted harvesting in this area during the remainder of the 2012-13 sea urchin fishing season may deplete a severely diminished resource beyond its ability to recover. A public hearing will be held in the affected area if requested of the Commissioner in writing by 5 persons. The hearing will be held within 30 days of the Commissioner receiving the written requests.

EFFECTIVE DATE: December 8, 2012

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DEPARTMENT OF MARINE RESOURCES

Chapter 26 - Sea Urchin Regulations

26.19 Whiting Bay and Denny's Bay Area:

1. It shall be unlawful to fish for or take urchins west of a line starting at the western end of Mahar Point, Pembroke, due south to the nearest point of land on Crow Neck, Trescott, to include all of Whiting Bay and Denny's Bay except by divers and rakers on December 3, 10, 17 and 26 and by draggers on December 4, 11, 18 and 27.
2. It is unlawful for sea urchin divers or rakers in Whiting Bay and Denny's Bay to fish for, take or possess more than ten (10) stackable standard 28" Long x 16" Wide x 11" sized totes of sea urchins per day in Maine's territorial waters.

It is unlawful for drag vessels in Whiting Bay and Denny's Bay to fish for, take or possess more than ten (10) stackable standard 28" Long x 16" Wide x 11" sized totes of sea urchins per day per drag vessel in Maine's territorial waters.

It is unlawful to offload sea urchins, or any parts of sea urchins, and then return to fishing for sea urchins the same day in Maine's territorial waters. In addition it is unlawful to transfer sea urchins, or any parts of sea urchins to another vessel at sea.

Stackable totes, with respect to the urchin fishery, means totes shall not be filled with sea urchins in a manner which prevents them from being stacked one on top of the other as designed. The bottom of one tote shall rest on the shelves of the tote below.

Basis Statement

Chapter 26.19(2) Whiting Bay and Denny's Bay Area, 10 Tote Limit Emergency regulations

Justification:

Maine's urchin landings have declined precipitously from a peak of over 41 million pounds in 1993 to less than six million pounds each year since 2003, reaching an all-time low in 2011 of 2.4 million pounds (Figure 1). DMR began a dive-based fishery-independent survey of the state urchin resource in 2001. Coast wide surveys in 2012 found the resource to be healthiest in the Whiting & Denny's Bay region of Cobscook Bay, due to this area being closed to harvest since 2009, with patchy and poor abundance along the rest of the coast. In March 2012, the Whiting & Denny's Bay Area was surveyed specifically, in addition to the annual dive survey, in anticipation of its re-opening this season and was found to have by far the highest urchin density in the state. Because of this relative abundance, Whiting & Denny's Bay has been intensively fished upon its reopening on December 3rd to divers and rakers and on December 4th to draggers. Over 50 dive and 30 drag boats participated and some harvesters removed in excess of 20 and 40 totes each day, respectively. This constitutes an unusually large concentration of fishermen, capable of depleting the supply of urchins.

The most recent scientific information for this fishery based on the annual assessment that utilizes the dive survey and landings data indicated that a 50% decrease in fishing mortality was necessary to prevent continued depletion, due to a continued drop in sea urchin biomass in Zone 2. While effort was reduced this season by 33% through a season shortening of 9 days (from a 45 to 36 day season) and the requirement for divers to cull on bottom, the Department is concerned that unrestricted harvesting without a tote limit during the remainder of the 2012-13 sea urchin harvesting season in the Whiting & Denny's Bay Area will further deplete a severely diminished resource beyond its ability to recover, as this is the last standing urchin stock that has shown any successful recovery for the entire state. Continued unrestricted harvesting in the area of Whiting Bay and Denny's Bay Area would also damage sublegal urchins that could be caught during subsequent fishing seasons, and could impact the recovery of populations outside of Whiting and Denny's Bay. The significant immediate conservation measures of a ten (10) tote daily limit per individual diver, raker and dragger is necessary to reduce the risk of unusual damage and imminent depletion. Due to the fact that sea urchin populations throughout the state are at extremely low levels and have not shown a recovery, but rather a further decline, particularly in Zone 2, the Commissioner hereby adopts an emergency ten (10) tote daily limit of Maine's urchin fishery for divers, rakers and draggers in the Whiting & Denny's Bay Area as authorized by 12 M.R.S.A. §6171(3).

In accordance with 5 M.R.S.A. §8052, sub-§5-A a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's office, State House station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

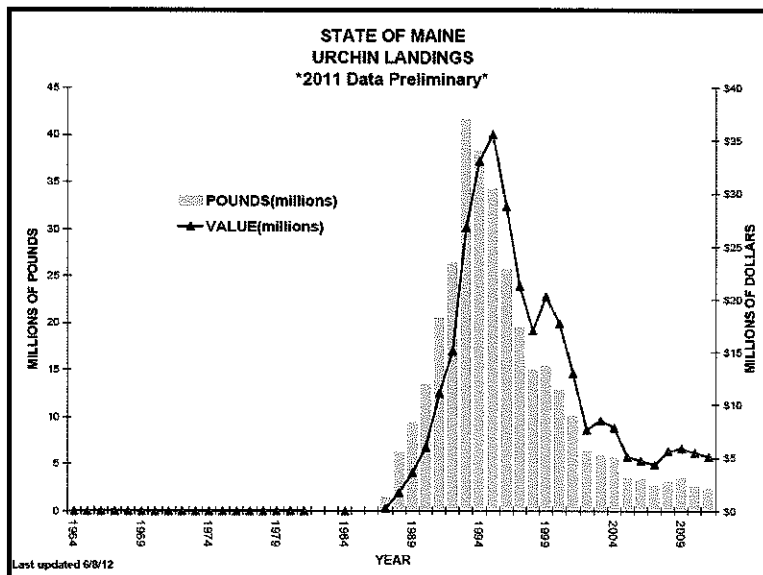


Figure 1. Maine urchin landings from 1964 to 2011.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 26.19(2) Whiting Bay and Denny's Bay Area, 10 Tote Limit
Emergency regulations

STATUTORY AUTHORITY: 12 M.R.S.A. §6171(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Commissioner adopts this emergency rulemaking for the implementation of a ten (10) tote limit in the Whiting Bay and Denny's Bay area to reduce fishing mortality, and prevent unusual damage and imminent depletion of the urchin resource. This regulation is intended to avoid the depletion of the resource beyond its ability to rebuild. For this reason, the Commissioner has enacted the emergency ten (10) tote limit outlined in these regulations as authorized by 12 M.R.S.A. §6171(3).

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

This rule seeks to conserve the sea urchin resource for utilization in the future, and therefore should have a positive impact on small business (sea urchin harvesters) in the long term. When the season was reduced from 94 days to 45 days in 2004, the rationale for imposing short-term hardship on Maine's sea urchin industry was that it was necessary to conserve the sea urchin resource. The resource has not shown signs of significant recovery since that time and therefore further management measures are required to reduce fishing mortality.

FISCAL IMPACT OF THE RULE:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Note: If necessary, additional pages may be used.

(File online with the Executive Director of Legislative Council, SHS 115 Rm 103, within 1-2 days after filing with SOS.)

Rulemaking statement of impact on small business
5 MRS §8052, sub-§5-A and §8053, sub-§3, ¶F, and
Executive Order 20 FY 11/12, August 24, 2011 (replaces EO's 09, 13 & 14)

Agency: Department of Marine Resources

Chapter Number and Title of Rule: Chapter 26.19 (2) Whiting Bay and Denny's Bay Area, 10 Tote Limit; Emergency Regulations

1. An identification of the types and an estimate of the number of the small businesses subject to the proposed rule; and EO20 1.A. The impact of the proposed rule on job growth or creation:

During the 2012-13 sea urchin season, there are 71 licensed divers, 126 draggers, and 1 raker in Maine's Zone 2 where Whiting Bay and Denny's Bay are located. There are 11 wholesale license holders with the urchin buyer endorsement and 10 wholesale license holders with the urchin processor endorsement. Without a healthy, sustainable sea urchin fishery the ability of urchin license holder numbers to continue to create job growth opportunities would be limited.

2. The projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; and EO20 1.C. The cost to the public in terms of time and money required to comply with the rule and EO20 1.B. The burden imposed by any fees included in the rule:

There are no additional reporting, record-keeping, fees or other administrative duties associated with this emergency urchin conservation area closures rule.

3. A brief statement of the probable impact on affected small businesses; and EO20 1.D. The extent to which other laws and regulations already address the subject matter of the rule:

The adopted rules seek to conserve the urchin resource in the Whiting Bay and Denny's Bay Area for utilization in the future. The rule is intended to have a long-term positive impact on the urchin resource to benefit future harvesters and the wholesale and retail seafood industry.

4. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule; and EO20 1.E. The relevant Federal standards, if any and the specific need for Maine's rules to differ from them if such a need exists:

The rule is intended to have a long-term positive impact on the urchin resource in order to benefit future harvesters and the wholesale and retail seafood industry by increasing the likelihood of a speedy recovery of Maine's urchin resource especially in this area of the state. In the short-term, harvesters and the businesses that purchase urchin have already seen a decrease in landings and therefore these measures are considered necessary. There are no federal regulations that apply in this case.

5. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained: Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.